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No. 330

In the Supreme Court of the United States

OCTOBER TERM, 1932

PETER L. McDONNELL, PETITIONER

v.

THE UNITED STATES

ON A WRIT OF CERTIORARI TO THE COURT OF CLAIMS

BRIEF FOR THE UNITED STATES

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OPINION BELOW

The opinion of the Court of Claims (R. 11–16) is reported in 59 F. (2d) 290.

JURISDICTION

The judgment below was entered May 31, 1932. (R. 16.) The petition for a writ of certiorari was filed August 31, 1932 (R. 16), and the writ was granted October 24, 1932 (R. 17). The jurisdiction of this Court rests on Section 3 (b) of the Act of February 13, 1925.

QUESTION PRESENTED

The writ of certiorari granted by this Court was limited to—

> the question of the validity of the waiver under Section 278 (e) of the Revenue Act of 1924.

The question presented is whether Section 278 (e) of the Revenue Act of 1924 renders invalid waivers executed after the enactment of the Act with respect to taxes, the assessment and collection of which had become barred prior to the effective date of the Act.

STATUTES INVOLVED

The statutes involved are set forth in the Appendix, *infra*, pp. 19–22.

STATEMENT

The facts found by the Court of Claims (R. 7–11) may be summarized as follows:

Petitioner filed his individual income-tax return for the year 1917 on April 1, 1918, and paid the tax shown to be due. (R. 7.) The partnership of McDonnell and Truda, of which petitioner was a member, filed its partnership return of income on April 1, 1918, and paid the profits tax computed thereon under Section 209 of the Revenue Act of 1917. (R. 7.) On March 18, 1923, the Commissioner of Internal Revenue made a jeopardy assessment of excess-profits tax for 1917 against the partnership

in the amount of $100,005.14. A claim for abatement of this assessment was filed. (R. 7.)

The Committee on Appeals and Review ultimately recommended that the profits tax of the partnership be computed under the special relief provisions of Section 210 of the Revenue Act of 1917. (R. 7.) Thereafter, on November 30, 1925, the Commissioner advised petitioner that inasmuch as any reduction of the excess-profits tax liability of the partnership necessarily involved a corresponding increase in the taxable net income of the partners, it would be necessary for petitioner to file a waiver of the statute of limitations applicable to assessment of his individual income tax before the respective tax liabilities of the partnership and the partners could be adjusted. (R. 7.) Accordingly, on February 23, 1926, a waiver with respect to assessment and collection of petitioner's income tax for the year 1917 was duly executed. (R. 9.)

Following the filing of this waiver, the tax liability of the partnership was settled on the basis of special assessment, and on May 22, 1926, petitioner was notified by thirty-day letter of a resulting deficiency in his 1917 income tax in the amount of $6,877.62. (R. 9, 10.) This amount was reduced pursuant to a protest filed by petitioner, and on October 9, 1926, an assessment was made against petitioner in the sum of $4,386.15, which sum, together with interest, was paid to the Collector on October 23, 1926. (R. 10, 11.)

Petitioner duly filed two claims for refund, alleging, *inter alia,* that the waiver was invalid, and that the tax was, therefore, collected out of time. (R. 11.) These claims were rejected (R. 11), and petitioner brought suit in the Court of Claims, which dismissed the petition (R. 16).

SUMMARY OF ARGUMENT

The petitioner contends that the waiver executed on February 23, 1926, was invalid under Sec. 278 (e) of the Revenue Act of 1924, because assessment of the tax was barred at the date of the enactment of that Act. But the waiver did not depend on Sec. 278 of the Revenue Act of 1924 for its validity (*Aiken* v. *Burnet,* 282 U. S. 277), nor was it invalid because executed after the statute of limitations had expired. *Stange* v. *United States,* 282 U. S. 270. The waiver needs no statutory sanction. It stands and is effective by itself. Sec. 278 (e) of the Revenue Act of 1924 at most imposes a limitation upon other provisions of the same section. Since those provisions need not be relied upon to support the validity of the waiver their limitation or qualification is not significant.

If reliance on Sec. 278 (c) of the Revenue Act of 1924 were necessary to sustain the waiver, that provision is not limited by Sec. 278 (e). *Burnet* v. *Chicago Railway Equipment Co.,* 282 U. S. 295, 300. Statutes imposing limitations upon the right of the Government to assess and collect taxes must be strictly construed and doubtful interpretations

must be resolved against the taxpayer. But all doubt as to the validity of the waiver in this case is removed by Sec. 278 of the Revenue Act of 1926. That section prevents the assessment or collection of a tax barred at the date of the enactment of the Act "unless prior to the enactment" a waiver was executed. Thus the 1926 Act sanctions waivers filed prior to its enactment, without reference to the Revenue Act of 1924.

If the waiver were invalid the taxpayer would be estopped from questioning its validity. The waiver was filed to secure a special assessment for the partnership of which petitioner was a member. The special assessment was allowed and the partnership tax was substantially reduced. The Commissioner changed his position in reliance upon the waiver, and the taxpayer, having personally benefited thereby, may not repudiate the waiver upon which the Commissioner relied. *Magee* v. *United States,* 282 U. S. 432, 434.

ARGUMENT

The petitioner's income tax return for the year 1917 was filed on April 1, 1918. (R. 7.) Under Section 250 (d) of the Revenue Act of 1921, c. 136, 42 Stat. 227, 265,[1] the period of limitation on assessment and collection of the petitioner's tax

[1] This statute provided that the amount of taxes due for the year 1917 "shall be determined and assessed within five years after the return was filed, unless both the Commissioner and the taxpayer consent in writing to a later determination, assessment, and collection of the tax; and no

for 1917 expired April 1, 1923, with the qualification, contained in the statute itself, that the period might be extended if both the Commissioner and the taxpayer consented in writing to a later assessment and collection of the tax.

On February 23, 1926, the petitioner and the Commissioner executed a consent in writing, waiving "the time prescribed by law for making any assessment of the amount of * * * taxes due under any return made by or on behalf of said taxpayer for the year 1917 * * *." (R. 9.) The question in this case is whether this waiver made valid the assessment and collection of the tax in October, 1926. (R. 10, 11.)

This Court has held that no express statutory provision is necessary to make valid a waiver by a taxpayer of the period of limitation on the assessment or collection of a tax. *Aiken* v. *Burnet,* 282 U. S. 277; *Brown & Sons Co.* v. *Burnet,* 282 U. S. 283. It has also been held that an assessment and collection waiver is not invalid merely because it was executed after the period of limitation had expired. *Stange* v. *United States,* 282 U. S. 270; *Burnet* v. *Chicago Railway Equipment Co.,* 282 U. S. 295.

From these decisions it follows that the waiver executed in this case was valid and effective unless it was rendered invalid by some express enactment

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suit or proceeding for the collection of any such taxes * * * shall be begun, after the expiration of five years after the date when such return was filed, * * *."

of Congress. The ultimate question, therefore, is whether Congress has expressed an intention to prevent taxpayers from doing what they could do without the authority of any statute.

The statute upon which the petitioner relies is Section 278 of the Revenue Act of 1924 (*infra,* pp. 20–21), which was in effect at the time the waiver in question was executed. Section 277 of the Revenue Act of 1924 established periods of limitation for the assessment and collection of all taxes imposed by that Act and by earlier Acts. But Section 277 was expressly made subject to exceptions contained in Section 278. Section 278 contains five paragraphs. Paragraph (a) provided that in the case of a false or fraudulent return the assessment and collection of the tax might be made at any time. Paragraph (b) provided that any deficiency due to a change in an amortization allowance under the Revenue Acts of 1918 or 1921 might be assessed or collected at any time. Paragraph (c) of Section 278 provides as follows:

> (c) Where both the Commissioner and the taxpayer have consented in writing to the assessment of the tax after the time prescribed in section 277 for its assessment the tax may be assessed at any time prior to the expiration of the period agreed upon.

Paragraph (d) provided that where a tax had been assessed within the period prescribed in Section 277 or Section 278 it might be collected within six years after the assessment of the tax. Paragraph

(e), the final paragraph of this Section, provided as follows:

> (e) This section shall not (1) authorize the assessment of a tax or the collection thereof by distraint or by a proceeding in court if at the time of the enactment of this Act such assessment, distraint, or proceeding was barred by the period of limitation then in existence, or (2) affect any assessment made, or distraint or proceeding in court begun, before the enactment of this Act.

The petitioner's argument is that paragraph (e) of Section 278 makes the waiver in this case ineffective, since the assessment and collection of the tax was barred on April 1, 1923, prior to the enactment of the Revenue Act of 1924. We believe that there are four answers to this argument: First, that the Government does not need to rely on any part of Section 278 to support the waiver; second, that if Section 278 (c) were relied upon, Section 278 (e) does not make the waiver invalid; third, that any doubt as to the validity of the waiver under the Revenue Act of 1924 is removed by Section 278 of the Revenue Act of 1926; and, fourth, that, even if the waiver were invalid, the petitioner would be estopped to raise the question.

I

THE WAIVER DID NOT DEPEND ON SECTION 278 (C) FOR ITS VALIDITY

It has already been pointed out that a waiver does not require statutory authority for its validity

(*Aiken* v. *Burnet*, 282 U. S. 277, *supra*), and that a waiver is not rendered invalid because it was executed after the statute of limitations has expired (*Stange* v. *United States*, 282 U. S. 270, *supra*; *Burnet* v. *Chicago Railway Equipment Co.*, 282 U. S. 295, *supra*). There is consequently no need to rely upon any statute to support the validity of the waiver in question; it stands, and is effective, by itself. Its validity, therefore, is not affected by Section 278 (e) of the Revenue Act of 1924 because that paragraph at most imposes only a limitation upon the authorizations by other paragraphs of the section. Since those authorizations need not be relied upon, their limitation or qualification is not significant.

It may be argued that Congress intended by Section 278 (c) to displace nonstatutory waivers and to provide an exclusive substitute for them, so that all waivers thereafter executed would find their support only in the statute. But we believe that this is not a proper interpretation of the statute. The making and accepting of waivers grew out of administrative practice without express authority of any statute. But since the origin of these waivers was in a sense extra-legal, doubts arose as to their validity, and these doubts as to the prestatutory waivers were not removed until 1931 when this Court's decision in *Aiken* v. *Burnet*, 282 U. S. 277, *supra*, was announced.

It seems obvious that the purpose of Congress in referring to waivers in Section 250 (d) of the Reve-

nue Act of 1921 and Section 278 (c) of the Revenue Act of 1924 was not to authorize such waivers, but to recognize them, and thus to remove doubts which then existed as to their validity.[2] These statutes were enabling in nature, not restrictive. Their purpose, we believe, was to ratify, not to deny. There is nothing in these statutes to indicate any intention on the part of Congress to do anything more than remove the doubts which otherwise existed as to the efficacy of waivers. The waiver in this case, therefore, does not depend upon Section 278 (c); it is merely recognized by that section; and thus Section 278 (e) is immaterial, because the validity of the assessment and collection of the tax in question does not depend on any provision of Section 278.

II

EVEN IF RELIANCE ON SECTION 278 (c) OF THE REVENUE ACT OF 1924 IS NECESSARY TO SUSTAIN THE WAIVER, THAT PROVISION IS NOT LIMITED BY SECTION 278 (e)

If Section 278 (c) were relied on by the Government, the waiver in this case would not be ineffective because of Section 278 (e). The precise question was considered by this Court in *Burnet* v. *Chicago Railway Equipment Company*, 282 U. S. 295, *supra*, althought the discussion was not strictly

[2] These sections, it is true, did impose the requirement that waivers be in writing, and that, for administrative purposes, they be signed by the Commissioner. Both of these requirements have been met in this case. (R. 9.)

necessary to the decision of that case. This Court there said (p. 300, n. 5):

> Subdivision (e) can not be said to qualify every other subdivision in §278. Nothing indicates an intention to have it limit the effect of §278 (a) which permits assessment to be made or suit to be brought at any time in the case of a false or fraudulent return or a failure to file any return. * * * Nor is there any indication that it should qualify subsection (c) which provides for the giving of waivers. * * * The decision in *Russell* v. *United States*, 278 U. S. 181, involved the interpretation of subdivision (d) which extended the period for collection without any act on the part of the taxpayer. Subdivision (c) is effective only if the taxpayer voluntarily executed a waiver.

This statement was adopted by the court below as authority for its decision, and also by the Circuit Court of Appeals for the Ninth Circuit in *Pacific Coast Steel Co.* v. *McLaughlin*, 61 F. (2d) 73, now pending on petition for certiorari, No. 518, October Term, 1932. The latter case involved a collection waiver and it was held that Section 278 (e) of the 1924 Act did not prohibit the filing of the waiver although collection was barred at the time of the enactment of the Act. See also *Pottash Brothers* v. *Burnet*, 50 F. (2d) 317 (App. D. C.).[3]

[3] In the *Pottash Brothers* case the Board of Tax Appeals found that the taxpayer had filed a series of waivers, but the finding failed to specify when or for what period the

The only dissent from this conclusion is found in the decision of the Circuit Court of Appeals for the Second Circuit in *Uncasville Manufacturing Co.* v. *Commissioner,* 55 F. (2d) 893.[4] The Circuit Court of Appeals in the *Uncasville* case took the view that Section 278 (e) of the Revenue Act of 1924 made ineffective waivers executed after the enactment of that Act if the assessment was barred prior to the enactment. In reaching this conclusion, the court indicated that the intent of Congress to create such a restriction was not clearly evidenced, but argued that paragraph (e) of Section 278 can not possibly apply to paragraphs (a), (b), or (d), and that unless it be construed as a limitation upon paragraph (c), which relates to waivers, it has no meaning whatever as far as assessments are concerned.

It is true that paragraph (e) does not appear to be applicable to paragraph (a) or (b). But this Court has held that it limits the effect of (d) in such a way as to permit collection within six years after assessment only in cases where assessment was made after the date of the Act. *Russell* v. *United States,* 278 U. S. 181. In the *Uncasville* case, however, the court argued that since (d)

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waivers were filed. The Court of Appeals relied on a waiver filed after the enactment of the 1924 Act, although the limitation on assessment had expired prior to that date. The effect of Section 278 (e) was not discussed, the court relying on *Stange* v. *United States,* 282 U. S. 270, *supra.*

[4] This Court denied a petition for certiorari filed by the taxpayer, which did not raise the present question. 286 U. S. 545.

governs only collections the decision in the *Russell* case fails to supply a meaning for that part of (e) which refers to assessments. Paragraph (d) changed the existing law by extending the period for collection to six years from the date of assessment "where the assessment of the tax is made within the period prescribed in section 277 or in this section * * *." Congress, realizing that there might be some doubt as to the effect of Sections 277 and 278 upon each other, may have inserted the reference to "assessment" in Section 278 (e) in order to make it clear that the extension of time for collection should not be regarded as authorizing assessment already barred by the applicable statute of limitations.

If Congress had intended that paragraph (e) should limit paragraph (c), such intention could have been clearly and unequivocally expressed by a specific provision to that effect. In *Pacific Coast Steel Co.* v. *McLaughlin*, 61 F. (2d) 73 (C. C. A. 9th), *supra*, the court said (p. 75):

> We find no language in subdivision (e) of section 278 or in any other part of the act of 1924 that expressly forbids taxpayers from, pursuant to the comprehensive wording of subdivision (c), voluntarily waiving the bar against the collection of validly assessed and unpaid taxes, the collection of which was barred on June 2, 1924. Subdivision (e) merely declares that section 278 of the 1924 act shall not authorize the assessment or the

> collection of such taxes. There being no clear prohibition against taxpayer's voluntary waiver or limitation for collecting taxes that have been timely assessed, it would be straining and amplifying the terms of (e) and unnecessarily restricting the broad and inclusive language of (c) to construe section 278 as appellant contends. We should not adopt a construction that would require giving to the statute a meaning not expressed by the language used.

Section 278 (e) of the 1926 Act, which is discussed in Point III below, indicates that Congress believed that all waivers previously filed were valid. This is even more apparent from the legislative history of the Revenue Act of 1928, which made substantial changes in the provisions relating to waivers. Section 506 of that Act, as originally presented to the House of Representatives, expressly provided that waivers could be filed after the expiration of the period of limitations. In commenting on that section, the Committee on Ways and Means said (House Report No. 2, 70th Congress, 1st Session, p. 29):

> Waivers filed prior to the 1926 Act are undoubtedly valid and have been so held by the Board of Tax Appeals. * * *

Statutes limiting the rights of the Government must be strictly construed. *Independent Coal & Coke Co.* v. *United States,* 274 U. S. 640; *Loewer Realty Co.* v. *Anderson,* 31 F. (2d) 268, 269 (C. C. A. 2nd), certiorari denied, 280 U. S. 558. Conse-

quently, we submit that an intention on the part of Congress to restrict the long-recognized power of a taxpayer to waive the statute of limitations applicable to the assessment or collection of his tax should not be found in the absence of a clear and unequivocal provision to that effect.

III

ALL DOUBT AS TO THE VALIDITY OF THE WAIVER UNDER SECTION 278 OF THE REVENUE ACT OF 1924 IS REMOVED BY SECTION 278 OF THE REVENUE ACT OF 1926

If there were any doubt about the validity of the waiver, we submit that it is removed by Section 278 of the Revenue Act of 1926. Sections 277 and 278 of the Revenue Act of 1926 superseded the corresponding Sections of the Revenue Act of 1924, and provided a comprehensive rule for the assessment and collection of all taxes then unpaid, including the tax now in question. Paragraph (e) of Section 278 of the Revenue Act of 1926 differed from the corresponding paragraph of Section 278 of the 1924 Act by providing that the Section should not authorize assessment of a tax barred at the date of the enactment of the Act—

> unless *prior to the enactment of this Act* the Commissioner and the taxpayer agreed in writing thereto, * * *. (Italics ours.)

Thus the 1926 Act clearly sanctions waivers filed prior to its enactment, without any reference to the

question whether such waivers would have been valid under the Revenue Act of 1924.[5] It is expressly applicable to this case. The Commissioner and the taxpayer having "consented in writing to the assessment of the tax after the time prescribed in section 277," the tax could be collected "at any time prior to the expiration of the period agreed upon," under Section 278 (c); and this is in no way limited by Section 278 (e) of the 1926 Act, since "prior to the enactment of this Act the Commissioner and the taxpayer agreed in writing" to assessment and collection within the terms of the waiver. Even if the right to assess and collect were barred under the statutes in effect prior to the enactment of the 1926 Act, it is plain that Congress had the power to revive those rights under the circumstances of this case. *Graham & Foster* v. *Goodcell*, 282 U. S. 409.

IV

THE TAXPAYER IS ESTOPPED FROM QUESTIONING THE VALIDITY OF THE WAIVER

In any event, we believe that the petitioner is estopped to object to the validity of the waiver on the ground that it was filed too late. When the waiver was filed, the petitioner and his partner were

[5] This argument is not affected, we believe, by Section 506 (c) of the Revenue Act of 1928, c. 852, 45 Stat. 791, 870 (U. S. C. Sup. V, Title 26, Secs. 1060–1062), which plainly was intended only to prevent the amendments con-

seeking special relief under Section 210 of the Revenue Act of 1917 with respect to assessment of the partnership's income and profits taxes for that year. See *McDonnell & Truda* v. *United States,* 59 F. (2d) 295 (C. Cls.), certiorari denied, October 24, 1932, No. 332, October Term, 1932. The granting of such relief necessarily involved a recomputation of the petitioner's income, since any reduction in the excess profits tax liability of the partnership automatically resulted in a corresponding increase in the taxable net income of the partners. The waiver now in issue was filed for the express purpose of securing special assessment for the partnership. (R. 9.) The special assessment was allowed, and the partnership tax was substantially reduced. The Commissioner, therefore, changed his position in reliance upon the taxpayer's consent. We submit that since the taxpayer benefited by the waiver, he is not in a position to question its legality.

The petitioner's position is very similar to that of the taxpayer in *Magee* v. *United States,* 282 U. S. 432. The taxpayer there contended that a claim in abatement which he filed in 1921 was illegal under Section 250 (d) of the Revenue Act of 1921, and that therefore his case was not covered by Section

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tained in Sections 506 (a) and 506 (b) from affecting waivers already executed. See House Report No. 2, 70th Congress, 1st sess., p. 29; Senate Report No. 960, 70th Congress, 1st sess., p. 36.

611 of the Revenue Act of 1928. This Court rejected the contention, saying (p. 434)—

> The taxpayer benefited by the claim and is not in a position to contest its legality.

See also *Florsheim Brothers Dry Goods Co.* v. *United States,* 280 U. S. 453, 464; *United States* v. *John Barth Co.,* 279 U. S. 370, 376; *Ralston Purina Co.* v. *United States,* 58 F. (2d) 1065 (C. Cls.); *Lucas* v. *Hunt,* 45 F. (2d) 781 (C. C. A. 5th).

CONCLUSION

The judgment of the Court of Claims is correct and should be affirmed.

Respectfully submitted.

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DECEMBER, 1932.

APPENDIX

Sections 277 and 278 of the Revenue Act of 1924, c. 234, 43 Stat. 253, 299, 300 (U. S. C., Title 26, Secs. 1057, 1058–1062), provide:

> SEC. 277. (a) Except as provided in section 278 and in subdivision (b) of section 274 and in subdivision (b) of section 279—
>
> (1) The amount of income, excess-profits, and war-profits taxes imposed by the Revenue Act of 1921, and by such Act as amended, for the taxable year 1921 and succeeding taxable years, and the amount of income taxes imposed by this Act, shall be assessed within four years after the return was filed, and no proceeding in court for the collection of such taxes shall be begun after the expiration of such period.
>
> (2) The amount of income, excess-profits, and war-profits taxes imposed by the Act entitled "An Act to provide revenue, equalize duties, and encourage the industries of the United States, and for other purposes," approved August 5, 1909, the Act entitled "An Act to reduce tariff duties and to provide revenue for the Government, and for other purposes," approved October 3, 1913, the Revenue Act of 1916, the Revenue Act of 1917, the Revenue Act of 1918, and by any such Act as amended, shall be assessed within five years after the return was filed, and no proceeding in court for the collection of such taxes shall be begun after the expiration of such period.

(3) In the case of income received during the lifetime of a decedent, the tax shall be assessed, and any proceeding in court for the collection of such tax shall be begun, within one year after written request therefor (filed after the return is made) by the executor, administrator, or other fiduciary representing the estate of such decedent, but not after the expiration of the period prescribed for the assessment of the tax in paragraph (1) or (2) of this subdivision.

(b) The period within which an assessment is required to be made by subdivision (a) of this section in respect of any deficiency shall be extended (1) by 60 days if a notice of such deficiency has been mailed to the taxpayer under subdivision (a) of section 274 and no appeal has been filed with the Board of Tax Appeals, or, (2) if an appeal has been filed, then by the number of days between the date of the mailing of such notice and the date of the final decision by the Board.

SEC. 278. (a) In the case of a false or fraudulent return with intent to evade tax or of a failure to file a return the tax may be assessed, or a proceeding in court for the collection of such tax may be begun without assessment, at any time.

(b) Any deficiency attributable to a change in a deduction tentatively allowed under paragraph (9) of subdivision (a) of section 214, or paragraph (8) of subdivision (a) of section 234, of the Revenue Act of 1918 or the Revenue Act of 1921, may be assessed, or a proceeding in court for the collection of such tax may be begun without assessment, at any time.

(c) Where both the Commissioner and the taxpayer have consented in writing to the

assessment of the tax after the time prescribed in section 277 for its assessment the tax may be assessed at any time prior to the expiration of the period agreed upon.

(d) Where the assessment of the tax is made within the period prescribed in section 277 or in this section, such tax may be collected by distraint or by a proceeding in court, begun within six years after the assessment of the tax. Nothing in this Act shall be construed as preventing the beginning, without assessment, of a proceeding in court for the collection of the tax at any time before the expiration of the period within which an assessment may be made.

(e) This section shall not (1) authorize the assessment of a tax or the collection thereof by distraint or by a proceeding in court if at the time of the enactment of this Act such assessment, distraint, or proceeding was barred by the period of limitation then in existence, or (2) affect any assessment made, or distraint or proceeding in court begun, before the enactment of this Act.

Section 278 (c) and (e) of the Revenue Act of 1926, c. 27, 44 Stat. 9, 59 (U. S. C. App., Title 26, Sec. 1062), provides:

(c) Where both the Commissioner and the taxpayer have consented in writing to the assessment of the tax after the time prescribed in section 277 for its assessment the tax may be assessed at any time prior to the expiration of the period agreed upon.

(e) This section shall not bar a distraint or proceeding in court begun before the enactment of the Revenue Act of 1924; nor shall it authorize the assessment of a tax or

the collection thereof by distraint or by proceeding in court (1) if at the time of the enactment of this Act such assessment, distraint, or proceeding was barred by the statutory period of limitation properly applicable thereto, unless prior to the enactment of this Act the Commissioner and the taxpayer agreed in writing thereto, or (2) contrary to the provisions of subdivision (a) of section 274 of this Act.

U. S. GOVERNMENT PRINTING OFFICE: 1938